

CLARENCE WREN

IBLA 75-267

Decided April 21, 1975

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting application A-059643 to purchase sand and gravel.

Affirmed.

1. Alaska Native Claims Settlement Act: Generally -- Alaska Native Claims Settlement Act: Native Village Selections -- Materials Act

Where approval of an application to purchase sand and gravel pursuant to the Materials Disposal Act of 1947 is opposed by a native village which has already selected the land on which the sand and gravel is located, and to whom conveyance is imminent, the application will be rejected.

APPEARANCES: Robert B. Flint, Esq., Wohlforth and Flint, Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Clarence Wren appeals from the November 21, 1974, decision of the Alaska State Office, Bureau of Land Management (BLM), which rejected his application to purchase sand and gravel pursuant to the Materials Disposal Act of 1947, as amended, 30 U.S.C. § 601 et seq. (1970).

The sand and gravel is located within an area of section 14, protracted T. 13 S., R. 56 W., Seward Meridian, Alaska. On December 4, 1973, the native village of Dillingham, known as Choggiung, Ltd., selected all available land in T. 13 S., R. 56 W., S.M., Alaska, pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq. (Supp. III, 1973). See State of Alaska, 19 IBLA 178 (1975). The BLM states in its decision of November 21, 1974, that "interim conveyance" of the land to the natives is imminent.

[1] Section 22 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1621(i) (Supp. III, 1973), provides that the Secretary of the Interior may enter into contracts or grant permits for materials located on lands withdrawn for native village selection at any time prior to conveyance of the lands. The appropriate regulation, 43 CFR 2650.1(a)(2)(i) provides that

Prior to the Secretary's making contracts, or issuing leases, permits, rights-of-way, or easements, the views of the concerned regions or villages shall be obtained and considered, except as provided in subdivision (ii) of this subparagraph.

A field report prepared for the BLM by Howard Edwards, a mining engineer, contains statements that the natives of the village of Dillingham are adamantly opposed to sale of the gravel to Clarence Wren. Similar statements are contained in a field report prepared by Jon Johnson, a realty specialist for BLM. ^{1/} The purpose of 43 U.S.C. § 1621(i) (Supp. III, 1973) is readily apparent: to keep the lands involved from being put into legal limbo for a considerable length of time, preventing their use for anyone's benefit. But in this case, as conveyance of the land is imminent, and as the natives are adamantly opposed to the sale, no such purpose would be served by approving it.

The decision appealed from stated, "It is the applicant's responsibility to obtain comments from the Native corporation and submit them to this office in accordance with the regulation governing the administration of Alaska Native Claims Settlement Act, specifically 43 CFR 2650.1(a)." The decision then notes that Mr. Wren has not done so, and that his application is therefore deficient.

Wren's appeal is strongly premised upon his assertion that the regulation cited does not make this the applicant's responsibility. We need not decide this question, as we find that the Alaska State Office has ascertained the attitude of the Native corporation and has adequately documented its opposition to Wren's application.

^{1/} The field report prepared by Howard Edwards recommends that the sale not be approved. The field report prepared by Jon Johnson recommends that the sale be approved. Johnson's recommendation is apparently based on his belief that Clarence Wren is in a position to block access to the gravel pits by the City of Dillingham and by various agencies of the State of Alaska. However, in such event, they would have recourse to various remedies, including alternate routes, negotiation, or, ultimately, the power of eminent domain.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

